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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
PRYOR, ALTON NATHANIEL	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
04/01/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No.	Applicant(s)	
	10/549,268	ZAGAR ET AL.	
	Examiner	Art Unit	
	ALTON N. PRYOR	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *3-6,8-10,12 and 14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,7,11,13 and 15-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/GB/08) Paper No(s)/Mail Date *9/13/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Heterocyclic ring systems of component B and various structures of the C component.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: 1-22.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The chemical structures of components B and C differ in classification.

During a telephone conversation with Mr. Harston on 3/22/10 a provisional election was made with traverse to prosecute the invention of picolinafen plus cloquintocet plus tritosulfuron, claims 1,2,7,11,13,15-22. Affirmation of this election

must be made by applicant in replying to this Office action. Claims 3-6,8-10,12 and 14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,2,11,15,16,19,20 and 22 **are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Determination of Claim Scope

Claims 1,2,11,15,16,19,20 and 22 of the instant application claim a synergistic herbicidal invention comprising instant A plus B herbicides, particularly synergistic combinations of picolinafen plus tritosulfuron based on the election.

Review of Applicants' Disclosure

The instant specification does not disclose data supporting instant synergistic combinations of well known A and B compounds claimed.

Breadth of Claims

Applicants' claims are drawn to synergistic combinations of instant A plus B compounds.

Nature of the invention/State of the Prior Art

Anon suggests a co-herbicide composition comprising picolinafen plus tritosulfuron. The composition was applied in common liquid and solid formulations. Anon does not exemplify an invention comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30). Anon also does not teach the composition comprising the safener cloquintocet. However, Baltruschat et al. suggest herbicide compositions comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30)plus cloquintocet (column 12 lines 5-6). Baltruschat et al. teach a method of applying the composition to crop to control weeds (abstract, claims). Like Anon, Baltruschat et al. do not exemplify an invention comprising picolinafen plus tritosulfuron plus cloquintocet. However, it would have been obvious for one of ordinary skill in the art to arrive at such an invention. One would have been motivated to this since Baltruschat et al. suggest the combination of ingredients. With respect to the instant amounts and ratios compounds, an artisan in the field would have been expected to determine the optimum amounts and ratios of each compound. One would have been motivated to do this in order to make a herbicide composition that would have been effective at controlling weeds without destroying the crop.

Undue Experimentation/Working Examples

Applicants provide no synergistic working examples of the combinations claimed.

Therefore, undue experimentation is required to determine which ratio and amounts of ingredients will yield synergistic results.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,11,15,19,20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Anon (RD 451014; 11/10/01). Anon teaches a co-herbicide composition comprising picolinafen plus tritosulfuron. The composition was applied in common liquid and solid formulations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,2,7,11,13,15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anon (RD 451014; 11/10/01) and Baltruschat et al. (USPN 6683027; 1/27/04). Anon suggests a co-herbicide composition comprising picolinafen plus tritosulfuron. The composition was applied in common liquid and solid formulations.

Anon does not exemplify an invention comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30). Anon also does not teach the composition comprising the safener cloquintocet. However, Baltruschat et al. suggest herbicide compositions comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30)plus cloquintocet (column 12 lines 5-6). Baltruschat et al. teach a method of applying the composition to crop to control weeds (abstract, claims). Like Anon, Baltruschat et al. do not exemplify an invention comprising picolinafen plus tritosulfuron plus cloquintocet. However, it would have been obvious for one of ordinary skill in the art to arrive at such an invention. One would have been motivated to this since Baltruschat et al. suggest the combination of ingredients. With respect to the instant amounts and ratios compounds, an artisan in the field would have been expected to determine the optimum amounts and ratios of each compound. One would have been motivated to do this in order to make a herbicide composition that would have been effective at controlling weeds without destroying the crop. While Applicants' claims are drawn to synergism, Applicants provide no data in the Specification to support synergism.

Election Status

Elected invention comprising picolinafen plus tritosulfuron is not allowable.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616